IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12137 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KJ NAKUM

Versus

JAMNAGAR MUNICIPAL CORPORATION

Appearance:

MR DIVYESH SEJPAL for Petitioner

MR JR NANAVATI for Respondent No. 1, 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 11/01/2001

ORAL JUDGEMENT

1. Mr. J.R.Nanavati, learned Counsel for the respondents appears in response to the notice issued by this Court on 30.11.2000. He has tendered affidavit in reply of respondent no.1. Mr.Sejpal appearing for the

petitioner has placed draft amendment and sought permission. Permission granted. Amendment to be carried out. At the request of both the sides the matter is taken up for final hearing and disposal today.

2. Rule. Mr.J.R.Nanavati appears and waives service of rule on behalf of the respondents. The petitioner who is contractor filled up tender for supply of metal moram to the respondent Municipal Corporation. On opening of the tenders it was found that the rates quoted by the petitioner were 40.10% less than the fixed rates. Therefore, in the normal circumstances, the tender filled up by the petitioner should have been accepted. The respondent corporation passed a resolution on 30.11.2000 (exh.'F') wherein it accepted that the rates tendered by the petitioner are the lowest; inspite of this, in the aforesaid resolution, the respondent corporation has taken a stand that as the police complaint had been filed against the petitioner contractor in relation to an earlier work order relating to construction work of Community Hall the tender for supply of metal moram for financial year 2000-2001 should not be accepted and taking into consideration the rate of the petitioner the contract should be given to any other contractor who agrees to supply the material at a rate lower than one stated by the petitioner contractor in the tender.

3. Mr.Sejpal, the learned Counsel for the petitioner has pointed out that the aforesaid reasoning adopted in the resolution cannot be a valid ground for rejecting the tender in light of the earlier resolution no.419 dated 14.12.1999 (Annex."C"). In the earlier resolution dated 14.12.1999 it has been specifically resolved that " on the complaint against the contractor being finally resolved a motion shall be proposed and a resolution shall be made. That, till that point of time the contractor will be entitled to fill up the tenders like other contractors and the rates filled up in the tender by the contractor shall be taken into consideration". It is contended that in the light of this specific resolution, the subsequent resolution whereby the present tender is sought to be rejected is vitiated as the reasoning adopted by the standing committee goes against its own resolution of permitting the contractor to apply and consider the rates on merits. This is more so, in light of the fact that the standing committee in the subsequent resolution has categorically found that the rates tendered by the petitioner contractor are lowest.

4. On behalf of the respondent corporation it was submitted that the petitioner is not blacklisted as is

his apprehension, as stated in the petition, but the respondent is entitled to take into consideration the past event while deciding whether to accept the tender or not.

5. Having heard both the sides and taking into consideration the two resolutions, it is apparent that the subsequent resolution seeks to indirectly penalise the petitioner contractor for earlier default by rejecting the present tender for supplying the material inspite of the fact that the rates offered are lowest. Moreover, the present tender being only in relation to supply of material, inferior construction in relation to earlier contract cannot be a valid ground for rejecting when it is found as a matter of fact that the rates offered are competitive and there is no other offer which is lower than one offered by the petitioner.

6. In view of the aforesaid facts and circumstances on record, the resolution at Annexure 'F' is quashed to the extent that it resolves not to accept the tender of the petitioner and the respondent corporation is directed to take the tender of the petitioner into consideration before awarding the contract. It is made clear that the respondent corporation shall take the rates offered into consideration and take appropriate decision and before doing so permit the petitioner to modify the rates, if permitted to the other contractors. This petition is allowed to the aforesaid extent. Rule made absolute. Direct service is permitted.

Sd/-
(D.A.Mehta,J)

m.m.bhatt